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5 Attorneys for Defendant, B & L BIKE AND SPORTS, INC.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

10 MITCHELL EGGERS, an individual,
11 Plaintiff,
12 vs.

13 B & L BIKE AND SPORTS, INC., a
14 corporation, and DOES 1 to 10,
inclusive.

15 Defendants.

Case No.
) 08 CV 0198 JM LSP
)
) DEFENDANT B & L BIKE AND
) SPORTS, INC.'S ANSWER TO
) COMPLAINT
) (JURY DEMANDED)
)
)
)
) Dept.: 6
) Judge: Hon. Jeffery T. Miller
) Complaint Filed: February 1, 2008

18 COMES NOW, DEFENDANT, B & L BIKE AND SPORTS, INC., and answers
19 the complaint on file herein for itself alone and no others as
20 follows:

I.

ANSWERING PARAGRAPH 4, this answering Defendant admits the allegations contained therein.

II.

ANSWERING PARAGRAPHS 1, 2, 3, 5, 7 and 9, this answering
Defendant lacks sufficient information and belief upon which to
admit or deny the allegations contained therein, and on that basis,
deny.

1 III.

2 ANSWERING PARAGRAPHS 6, 8, 11, 12, 13, 14, 15, 16, 17, 18, 20,
3 21, 22, 23, 24, 25, 26, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 39,
4 40, 41, 42, 43, 44, 45, 46, 48, 49, 50, 51, 52 and 53, this
5 answering Defendant denies each and every allegation contained
6 therein and the whole thereof.

7 IV.

8 ANSWERING PARAGRAPHS 10, 19, 29, 38 and 47, this answering
9 Defendant incorporates its responses to all of the paragraphs which
10 were incorporated in the herein numbered paragraphs as if fully set
11 forth.

12 V.

13 AS AND FOR A SEPARATE AND DISTINCT FIRST AFFIRMATIVE DEFENSE
14 TO THE COMPLAINT, this answering Defendant alleges that, at the time
15 and place of the happening of the event as alleged by the Plaintiff,
16 the Plaintiff did not exercise ordinary or reasonable care for his
17 own safety or interest, and therefore any injury or damage sustained
18 by Plaintiff was the result of his own negligence.

19 VI.

20 AS AND FOR A SEPARATE AND DISTINCT SECOND AFFIRMATIVE DEFENSE
21 TO THE COMPLAINT, this answering Defendant alleges that the
22 Plaintiff was not using the product in its intended manner or in a
23 foreseeable manner, and therefore his claim is barred in whole or
24 in part.

25 VII.

26 AS AND FOR A SEPARATE AND DISTINCT THIRD AFFIRMATIVE DEFENSE
27 TO THE COMPLAINT, this answering Defendant alleges that the
28 ///

1 Plaintiff has failed to mitigate his damages, and therefore any
2 damages are barred in whole or in part.

3 VIII.

4 AS AND FOR A SEPARATE AND DISTINCT FOURTH AFFIRMATIVE DEFENSE
5 TO THE COMPLAINT, this answering Defendant alleges that the
6 Plaintiff failed to follow all manufacturer's instructions regarding
7 the use of the product, and therefore his claim is barred in whole
8 or in part.

9 IX.

10 AS AND FOR A SEPARATE AND DISTINCT FIFTH AFFIRMATIVE DEFENSE
11 TO THE COMPLAINT, this answering Defendant alleges that the
12 Plaintiff's injuries, if any, were the result of the actions of
13 others.

14 X.

15 AS AND FOR A SEPARATE AND DISTINCT SIXTH AFFIRMATIVE DEFENSE
16 TO THE COMPLAINT, this answering Defendant alleges that the product
17 was altered after it was acquired by the Plaintiff.

18 XI.

19 AS AND FOR A SEPARATE AND DISTINCT SEVENTH AFFIRMATIVE DEFENSE
20 TO THE COMPLAINT, this answering Defendant alleges that the
21 Plaintiff was aware of the inherent risk in riding a bicycle and has
22 assumed the risk of such injury.

23 XII.

24 AS AND FOR A SEPARATE AND DISTINCT EIGHTH AFFIRMATIVE DEFENSE
25 TO THE COMPLAINT, this answering Defendant reserves the right to
26 allege further affirmative defenses not presently known or realized.

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XIII.

WHEREFORE, this answering Defendant prays judgment as follows:

- 3 1. That Plaintiff takes nothing by way of his actions;
- 4 2. That Defendant be awarded reasonable costs of suit incurred
herein; and
- 5 3. That Defendant be awarded such other and further relief as
this court may deem just and proper.

8 | Dated: March 5, 2008

SHIFFLET, KANE & KONOSKE, LLP

By: /S/Gregory P. Konoske
Gregory P. Konoske, Esq.
gkonoske@shiffletlaw.com
Attorney for Defendant,
B & L BIKE AND SPORTS, INC.

4 Jury is hereby demanded on all issues relating to the complaint
5 on file herein.

By: /S/Gregory P. Konoske
Gregory P. Konoske, Esq.

1 **EGGERS v. B & L BIKE SPORTS, INC.**

2 UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA
2 Case No.: 08 CV 0198 JM LSP

3 **PROOF OF SERVICE**

4 I, Gregory P. Konoske, declare as follows:

5 I am over the age of eighteen years and not a party to the within
6 entitled action. I am employed in the County of San Diego, State
7 of California, within which county and state the subject mailing
occurred. My business address is 16880 West Bernardo Drive, Suite
250, San Diego, California 92127.

8 The undersigned certifies that the foregoing document:

9 **DEFENDANT B & L BIKE AND SPORTS, INC.'S ANSWER TO COMPLAINT
(JURY DEMANDED)**

10 was filed electronically in compliance with Local Rule 5.4 (c). As
11 such, said document was served on counsel identified below who are
12 deemed to have consented to electronic service. Local Rule 5.4.
(c).

13 Brian J. Panish, Esq.

14 Kevin R. Boyle, Esq.

15 **PANISH, SHEA & BOYLE, LLP**

16 11111 Santa Monica Boulevard,

Suite 700

Los Angeles, CA 90028

Attorney for Plaintiff:

MITCHELL EGGERS

Tel: (310) 477-1700

Fax: (310) 477-1699

17 I declare under penalty of perjury under the laws of the State of
California that the foregoing is true and correct.

18 Executed on: March 5, 2008

/S/Gregory P. Konoske

19 Gregory P. Konoske

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